

MEMORANDUM

TO: Messrs. Ramm, Hetsko, Haas, Russell, Smith,
Yeamin and Austern

SUBJECT: CONSUMER SURVEY

It has been suggested to us by experts in the field of marketing and communications -- Professor Gary Steiner of the University of Chicago Graduate School of Business, and Professor David Berlo of the Department of Communications, Michigan State University -- that strong support for the industry position that labeling and warnings in advertisements are not necessary might be developed through a public opinion survey. Such a survey would attempt to establish six basic propositions:

1. That there is greater public awareness of the charges against smoking than there is of numerous other important public issues;
2. That a very high percentage of the American public believes there are risks to health involved in habitual smoking of cigarettes;
3. That the risk to health is overestimated (accepting as a basis for comparison the statistics in the Surgeon General's report and the Royal College report);
4. That there is substantially greater public awareness of the possible risks of cigarette smoking than there is of such other health issues as the cholesterol question, drinking and obesity;

5. That persons who do not know of the health issues probably would not be reached by warnings in any event;

6. That advertising does not have as much to do with the social acceptability of smoking as do numerous other personal and psychological factors.

The Legal Committee considered this proposal at its meeting in Washington on May 7, 1963, and authorized a survey on a pilot basis. We requested Professor Steiner to formulate questions that might be used. A draft questionnaire prepared by Professor Steiner has been thoroughly revised with a view toward seeking information on the above listed propositions without raising extraneous issues. It is the opinion of Professors Berlo and Steiner that the survey is likely to establish these propositions.

If Professors Berlo and Steiner are correct in predicting that the returns will be favorable, it is possible that this information could be of significance to the industry both for its Congressional presentation and for other purposes. If, for example, we were able to establish that the American consumer overestimates the risks of habitual smoking, the case for warning or labeling would be weakened.

The time factor severely limits our flexibility in adopting plans for the implementation of this survey. In the time available, i.e., in order to get analyzed returns before the end of June, we would be able only to take a survey of

one major area. Further, even within that limitation, we would not be able to obtain various well known research organizations such as Elmo Roper. Professor Steiner has recommended Elrich & Lavidge, Inc., which is a very highly-respected market planning and research organization in Chicago. Elrich & Lavidge has also been used by a client of Covington & Burling and is held in high regard by Stan Tempko. The geographic area for this study would be the Chicago metropolitan and suburban area. The cost (on an accelerated study) would be \$18 an interview. It has been recommended that we do 1,000 interviews on a sampling carefully selected to achieve an accurate cross-section of that area. The cost of the survey would thus be \$18,000, including tabulation.

A 1,000 interview sample could be completed by Elrich & Lavidge and analyzed by Professor Steiner in time for testimony in the last week in June. A smaller sampling could be completed a week or so earlier.

The question has been raised of possible adverse use of a survey. Specifically, Mr. Austern has suggested that should the results of the survey prove unfavorable, they may be subpoenaed or otherwise may fall into the hands of the FTC, a Congressional Committee, or a plaintiff in pending cancer litigation. There is no question that some risk exists. We have been assured by both Elrich &

Lavidge and by Professor Steiner that they would transmit to us every interview and every copy of the analysis. Thus, when it is completed, there will be nothing in the records of Elrich & Lavidge or Professor Steiner to subpoena. The danger of a successful subpoena would be reduced (though not entirely eliminated) if the survey were in an attorney's files. In any event, if the returns were unfavorable they could be destroyed and there would be no record in any office of the nature of the returns. The possibility of compelling oral testimony from Steiner, of course, always exists.

Another drawback of the proposal is that neither Professor Steiner nor any other reputable person in the field will testify as to the results of the poll and exclude the answers to certain questions from his analysis. In other words, if the returns on a particular question are unfavorable but the survey otherwise is favorable, it will be necessary either not to use the survey or to use the unfavorable data as well. In the attached draft questionnaire, we have tried to avoid that problem by avoiding unnecessary questions which might elicit answers harmful to us. The questionnaire has been revised to eliminate questions that might upset an otherwise favorable return.

In sum, there are risks. However, there are also potential benefits of real substance. The issue to be resolved is whether the risks of the pilot project outweigh the advantages which we

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may realize. A decision on this question will be necessary one way or the other in the immediate future if we are to be able to have the returns in time for use before the Congressional hearing in June.

Arnold, Fortas & Porter

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